

1 MCGREGOR W. SCOTT
United States Attorney
2 KRISTIN S. DOOR SBN 84307
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2723

5 Attorney for Plaintiff
United States of America
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8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 REAL PROPERTY LOCATED AT 2363
14 FAIRVIEW LANE, PLACER COUNTY,
NEWCASTLE, CALIFORNIA, BEARING
15 APN: 032-253-036, INCLUDING ALL
APPURTENANCES AND IMPROVEMENTS
16 THERETO,

17 REAL PROPERTY LOCATED ON LINCOLN
STREET, PLACER COUNTY,
18 ROSEVILLE, CALIFORNIA, BEARING
APN: 012-200-010, INCLUDING ALL
19 APPURTENANCES AND IMPROVEMENTS
THERETO,

20 Defendants.
21

2:04-CV-1867 WBS/JFM

**STIPULATION FOR EXPEDITED
SETTLEMENT BETWEEN PLAINTIFF
UNITED STATES OF AMERICA AND
AMERICAN RIVER BANK AND ORDER
THEREON**

22 IT IS HEREBY STIPULATED by and between plaintiff United
23 States of America and claimant American River Bank ("American
24 River"), through their respective counsel of record, that
25 American River has a valid pre-existing mortgage lien on the
26 defendant real property described in this Stipulation, which is
27 not contested by plaintiff.
28

1 Plaintiff United States of America and claimant American
2 River further stipulate that:

3 1. Any violations of 21 U.S.C. § 881 (a)(6) and (7)
4 involving the defendant property located at 323 through 329
5 Lincoln Street, Roseville, California, Placer County APN 012-200-
6 010, occurred without the knowledge and consent of American
7 River.

8 2. Plaintiff United States agrees that upon entry of a
9 final order of forfeiture in favor of the United States,
10 plaintiff, through the United States Marshals Service or its
11 agent(s), shall undertake to sell the defendant real property in
12 a commercially reasonable manner and to sell said property at a
13 private sale for fair market value (the "Purchase Price"). The
14 following costs and expenses of sale shall be deducted from the
15 Purchase Price and paid directly out of escrow in the following
16 order:

17 (a) First, the costs incurred by the United States
18 Marshals Service to the date of close of escrow, including the
19 cost of posting, service, advertising, and maintenance;

20 (b) Second, to the Placer County Tax Collector (for
21 real property taxes) of all real property taxes assessed and
22 unpaid against the defendant real property prorated to the date
23 of entry of the final order of forfeiture;

24 (c) Third, the costs and expenses associated with the
25 sale of the real property.

26 (d) Fourth, any county transfer taxes.

27 (e) Fifth, to American River as follows:
28

1 (i) all unpaid principal due to American River
2 under the Promissory Note dated May 11, 2004, in the original
3 principal amount of \$250,000.00, a true and correct copy of which
4 is attached hereto as Exhibit "A" ("Note"), and which is secured
5 by a Deed of Trust dated May 11, 2004, recorded May 14, 2004, as
6 instrument number 2004-0061481 of the Official Records of Placer
7 County, California ("Deed of Trust "), a true and correct copy of
8 which is attached hereto as Exhibit "B", and by an Assignment Of
9 Rents dated May 11, 2004, recorded May 14, 2004, as instrument
10 number 2004-0061482 of the Official Records of Placer County,
11 California("Assignment of Rents"), a true and correct copy of
12 which is attached hereto as Exhibit "C".

13 (ii) all unpaid interest due as of the date of
14 the closing of the sale of the defendant real property at the
15 contractual (not default) adjustable rate under the above-
16 referenced Note;

17 (iii) all fees, costs, and advances, including but
18 not limited to reasonable attorney fees, prepayment fees, taxes
19 and hazard insurance as provided under the terms of the Note and
20 Deed of Trust.

21 3. The payment to American River shall be in full
22 settlement and satisfaction of any and all claims by American
23 River to the defendant property and all claims resulting from the
24 incidents or circumstances giving rise to this lawsuit.

25 4. Upon payment in full as set forth in ¶ 2(e) (I)-(iii),
26 above, claimant American River agrees to assign and convey its
27 security interest to the United States via recordable documents
28 and to release and hold harmless the United States, and any

1 agents, servants, and employees of the United States, (or any
2 state or local law enforcement agency) acting in their individual
3 or official capacities, from any and all claims by the American
4 River and its agents which currently exist or which may arise as
5 a result of the government's action against the property.

6 5. In the event it is determined that the proceeds of a
7 sale of defendant real property would be insufficient to pay
8 American River in full as set forth in ¶ 2(e) (I)-(iii), above,
9 after the disbursements described in ¶ 2 (a)-(d) hereinabove are
10 made, the plaintiff United States agrees to release its interest
11 in the defendant real property and consent to the exercise of
12 American River's state law rights to foreclose upon its deed of
13 trust which secures the obligation to American River. Plaintiff
14 shall not enter into a binding agreement to sell the defendant
15 real property unless the proceeds of such sale are sufficient to
16 pay American River in full as set forth in ¶ 2(e) (I)-(iii,
17 unless American River otherwise consents in writing.

18 6. Claimant American River agrees not to pursue against
19 the United States any other rights that it may have under the
20 mortgage instrument, including, but not limited to, the right to
21 initiate a foreclosure action without the consent of the United
22 States Attorney's Office or this Court.

23 7. Claimant American River agrees to notify the United
24 States Attorney at the end of the first payment cycle in which a
25 payment is not made under the terms specified in the security
26 instrument and promissory note. Claimant further agrees to join
27 any government motions for interlocutory or stipulated sale of
28

1 the defendant property if the proceeds of such sale will be
2 sufficient to pay American River in full as set forth in ¶ 2(e)
3 (I)-(iii), and any motions to remove occupants from the property
4 for nonpayment of mortgage or rent, destruction of property, or
5 other just cause.

6 8. Claimant American River understands and agrees that by
7 entering into this stipulation of its interests in the defendant
8 real property, it waives any rights to further litigate against
9 the United States and its interest in the defendant and to
10 petition for remission or mitigation of the forfeiture. Unless
11 otherwise provided by this Stipulation or specifically directed
12 by order of this Court, American River is hereby excused and
13 relieved from further participation in this action.

14 9. American River understands and agrees that the United
15 States reserves the right to void the expedited settlement
16 agreement if, before payments of the mortgage or lien, the U.S.
17 Attorney obtains new information indicating that the mortgagee or
18 lienholder is not an "innocent owner: or "bona fide purchaser"
19 pursuant to applicable forfeiture statutes. The U.S. Attorney
20 also reserves the right, in its discretion, to terminate the
21 forfeiture at any time and release the subject property. In
22 either event, the United States shall promptly notify the
23 mortgagee or lienholder of such action. A discretionary
24 termination of forfeiture shall not be a basis for any award of
25 fees under 28 U.S.C. § 2465.

26 10. The parties agree to execute further documents, to the
27 extent necessary, to convey clear title to the defendant real
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1 property to the United States and to further implement the terms
2 of this stipulation.

3 11. The terms of this Stipulation are contingent upon
4 forfeiture of the defendant real property to the United States
5 and the Court's entry of a final judgment of forfeiture.

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7 Dated: Aug. 9, 2005

McGREGOR W. SCOTT
United States Attorney

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9 By /s/ Kristin S. Door
10 KRISTIN S. DOOR
11 Assistant United States
Attorney
Attorney for Plaintiff

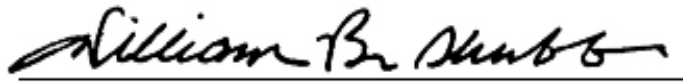
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13 Dated: Sept. 21, 2005

14 By /s/ Paul J. Dutra
15 PAUL J. DUTRA
16 Dutra & Oates
Attorneys for Claimant
American River Bank

17 (original signature retained by
18 attorney)

19 ORDER

20 SO ORDERED this 29th day of September, 2005

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22 
23 WILLIAM B. SHUBB
24 UNITED STATES DISTRICT JUDGE
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